

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 10, 1999 at
3:35 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 322, HB 170, HB 319,
2/2/1999, 2/5/1999
Executive Action: HB 170, HB 319, HB 85

HEARING ON SB 322

Sponsor: SEN. MIGNON WATERMAN, SD 26, Helena

Proponents: Chris Tweeten, Department of Justice
Claudia Clifford, Office of Commissioner of Insurance
Steve Browning, MHA...an Association of Healthcare Providers
Nick Wolter, Deaconess Billings Clinic
Carson Strege, Montana People's Action (MPA)

Opponents: Andy Forsythe, Yellowstone Community Health Plan
Jim Paquette, Sisters of Charity Hospitals
Mike Becker, Blue Cross/Blue Shield
Russ Ritter, Washington Corporation
Richard Brown, Livingston Hospital

Information: Jim Stipcich, Montana Higher Education Student Assistance Corporation

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, said the bill laid out clear, well-defined standards to establish the fair market value for non-profit entities who decided to convert to for-profit entities. It provided the Attorney General the authority to review and approve the conversions. She said she became aware of the conversion issue through being a trustee of her local hospital, and by watching the trend across the nation. Across the country, non-profit hospitals and health care entities converted or were bought by for-profit entities, and an example was the for-profit company who was running Montana's Mental Health Access Plan. For-profit companies often did not share Montana's values and concerns for their community health care system. It was her opinion the tax-paying public should have a chance to review the conversion and benefits from the sale of those accumulated assets.

She said she brought **SB 322** now as a proactive, rather than reactive, measure because she was not aware of any non-profit entity converting to for-profit. However, she received a letter **EXHIBIT (phs33a01)**, which stated the Montana Higher Education Student Assistance Corporation (MHESAC) was considering converting. She had asked an amendment to be drafted, which would strengthen language in the bill and include organizations, such as MHESAC. She also had technical amendments which clarified the Attorney General's review, i.e. reviews would not be duplicated by the Insurance Commissioner or Department of Public Health and Human Services (DPHHS). The reviews also would not include investment of funds which occurred in the ordinary courses of entities' business, but would allow for a judicial

review of the Attorney General's final decision. She also distributed copies of **EXHIBIT (phs33a02)**.

Proponents' Testimony:

Chris Tweeten, Department of Justice, said within the past year, they had dealt with the issue of the bill. A non-profit HMO in Montana became involved in a proposed transaction, in which all its assets were to be transferred to a for-profit entity. In other words, the stock would be owned jointly by Blue Cross/Blue Shield of Montana and St. Vincent's Hospital in Billings. He stated it was important to remember the bill dealt with an area where the Attorney General currently had jurisdiction. When an organization, such as the Yellowstone Community Health Plan, decided to transfer all its assets, other than in the ordinary course of business, it was obligated to notify the Attorney General.

Existing statute gave them 20 days to review the transaction and decide whether it was necessary for the Attorney General to take any action to safeguard any charitable trust assets which might be jeopardized as a result of the transaction. He said their office was contacted well in advance of the consummation of the transaction by the parties involved and there was cooperative work. However, as they engaged in the review under existing statute, it became apparent the Attorney General had very limited resources to bring to bear on this problem. He reported the transaction, at \$3 million in assets, was very small, because some transactions were valued at hundreds of millions of dollars in assets. They also involved evaluation judgements made by national accounting firms and investment banking firms, which earned hundreds of thousands of dollars when producing the opinions.

The Attorney General was expected to review those documents and draw conclusions about whether those charitable trust assets had been accurately valued. He reiterated his office had no budget to hire investment bankers to look at these infrequent transactions. In fact, the transactions were so infrequent, they could not develop in-house resources to develop the expertise they needed in order to engage in a reasonable review of the transactions. **Mr. Tweeten** stated **SB 322** was designed to give the Attorney General the roadmap and resources to use to walk through the review of one of these transactions. He explained future transactions could be expected, and it was imperative they had the resources and guidelines for those reviews.

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Claudia Clifford, Office of Commissioner of Insurance, said Commissioner of Insurance, Mark O'Keefe, supported **SB 322** because it was proactive. She said their office was also involved in the situation described by **Chris Tweeten**, and there was a question of whether the law was adequate. She agreed although they were dealing with a merger, it became apparent the specific statutory language relating to conversions was inadequate. Therefore, this bill would have statute in place to give guidelines for future conversions, i.e. it demonstrated forethought. This was a national issue because many non-profit entities were converting to for-profit; however, that situation had not yet hit Montana. Potential substantial public assets were at stake, and guidelines were needed to judge those assets and determine what the public was due. The bill was based on a national model developed by the National Attorney Generals Association, and was a good start in addressing the issue.

Steve Browning, MHA...an Association of Healthcare Providers, read his testimony from **EXHIBIT(phs33a03)**. He also said MHA did not speak as one voice in favor of this legislation, because some members disagreed.

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Nicholas Wolter, Deaconess Billings Clinic, read his written testimony **EXHIBIT(phs33a04)**.

Carson Strege, Montana People's Action (MPA), said they supported the bill because when a non-profit converted to for-profit status, Montana law said the assets must remain non-profit and be dedicated to the same or similar charitable purpose. The public was essentially the owner of these funds, which must forever be dedicated to the public's benefit. Traditionally, when the non-profit health care entity converted, the proceeds from the sale went to a non-profit health care foundation. However, without proper oversight of conversion transactions, vast amounts of the public's money could be siphoned from public benefit and put into private pockets. She said in the 1980s and early 1990s, when there were health insurance conversions, top executives purchased their companies, set the price at a very low rate and then waited until those companies sold at a high price on the stock market. They became multi-millionaires overnight. For-profit corporations would purchase non-profit hospitals at bargain-basement prices and promised top management positions and stock options in their companies.

She said attorney generals and community organizations got involved to stop the abuse and protect the public's assets and community's health care needs. The bill would ensure the

hundreds of millions of dollars invested in non-profit health care in Montana, would remain here to work for health. She explained the joint venture of Yellowstone Community Health Plan (YCHP) and Blue Cross/Blue Shield (BC/BS) was actively monitored by the Yellowstone Chapter of MPA. As soon as MPA heard about the conversions, they contacted the State Auditor's office to request a hearing, but because the law did not have a specific procedure, they could not delay the hearing until after MPA had analyzed the data. In fact, they did not receive pertinent information, including the evaluation of the transaction, until after the hearing was complete.

At the public hearing, many of their members asked important questions,

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including why did YCHP want to be come a for-profit entity or what would happen to the Medicaid of the low-income people in Billings. This bill set up an important process which future conversions would be forced to follow. They were pleased to see the conditions placed on the YCHP/BC/BS conversion by the Auditor's Office benefitted the low-income community. However, they felt strongly that a structure should be in place, because they were not confident future conversions would benefit the low-income community.

Opponents' Testimony:

Andy Forsythe, Attorney for Yellowstone Community Health Plan, read his written testimony **EXHIBIT**(phs33a05).

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Jim Paquette, Sisters of Charity Hospitals, read his written testimony **EXHIBIT**(phs33a06).

{Tape : 1; Side : B; Approx. Time Counter : 17.8}

Mike Becker, Blue Cross/Blue Shield (BC/BS), read his written testimony **EXHIBIT**(phs33a07).

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Russ Ritter, Washington Corporation, said they opposed the bill because of the cost. In 1998, his self-insured company spent

\$8.4 million on their 2,250 employees and families, which represented a 22% increase over the previous year. In 1994, they spent about \$4.7 million for approximately the same number of employees. That direction of health care costs was what made him concerned about **SB 322**. He explained employees of the Washington Corporation paid \$5.00 per week for health care, and if they wanted to add their families, it was another \$5.00 per week. If, however, **SB 322** passed, the premium costs would rise or benefits would have to be cut. Therefore, his company opposed anything which would add costs to health care.

Richard Brown, Livingston Memorial Hospital, could not be present so his written testimony was read by Chuck Butler, BC/BS **EXHIBIT** (phs33a08).

Informational Testimony:

Jim Stipcich, Montana Higher Education Student Assistance Corporation (MHESAC), said they were neither proponents nor opponents; however, they wanted to address a few items. One of their concerns was the actual cost the converting entity would have to pay for the outside consultants. Also, they did not know how many Montana non-profits qualified for the \$1 million asset category. The amendment proposed by **SEN. WATERMAN** established a very low threshold for the Attorney General to conduct reviews of entities, which might be considering conversions, which were non-health care and orientation. He suggested if fair market value of assets were covered in the threshold, it should be very well defined. He also expressed interest in working with **SEN. WATERMAN** on the time periods in the amendment, and recognized the need and significant effort of those involved in this transaction. However, they were concerned the 150 days could have a financial impact on whether the transaction may or may not occur.

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Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked if the 20 days could be changed to six months. **SEN. MIGNON WATERMAN** said both she and the drafter had reviewed the national model legislation and what was done in other states. They both felt more legislation was needed than just extending the review period. However, she also understood people's concerns so she had worked with BC/BS to tighten it up so the time period was not onerous, yet allowed enough time for review. The time frame in the bill did not have to be that long.

She expressed concern about the costs and offered to work with others to limit them.

SEN. GRIMES asked how there would not be additional costs for both the Department and entities involved. **SEN. WATERMAN** said she did not think the steps and hoops were nearly as onerous as thought. In fact, one entity which was just on the brink of doing this said the standards were not high enough and they would like to work to strengthen them. They were concerned the time lines and costs would not be onerous.

SEN. GRIMES asked how broad the bill was. **SEN. WATERMAN** said she proposed a separate amendment when the MHESAC issue was raised. She said she originally was talking about health care plans and community benefit of hospitals and health care plans.

SEN. GRIMES said now it seemed the bill was exhaustive and intrusive for business decisions in the health care arena. Now it seemed anything could be edited in, and the bill would go beyond its original intention. **SEN. WATERMAN** said it did not need to be intrusive or onerous. The reason should be to look at the public good, which was certainly there in the student loan organization.

SEN. B.F. "CHRIS" CHRISTIAENS asked what was considered a material transaction. **Steve Browning** said the MHA board, which reviewed this bill very recently, felt there was not an adequate definition of "material transaction."

SEN. CHRISTIAENS suggested the amendment was a "creeping conversion", because it talked about the five years preceding, or 20% or greater interest in the assets. **Mr. Browning** said the five years was included for that purpose.

SEN. DOROTHY ECK said she thought of the Bozeman Hospital and asked if the extraneous things it did would be reviewed by the Attorney General. **Mr. Browning** said if this definition were adopted, they would; however, it would be determined by their own calculation if they sought to do those. If the amendment was absent, they would not know whether or not they were using material amounts, because it was not defined.

SEN. ECK asked if the Bozeman hospital had been contacted. **Steve Browning** said he personally had not, but that did not mean they had not been contacted. **SEN. ECK** said Bozeman people admired the administration of that hospital because of its good business decisions and not coming to the people for bond issues. It seemed this would put a damper on that. **Mr. Browning** said MHA was organized in regions and its members elected a representative

who served on the board. The region for the Bozeman Deaconess Hospital elected the CEO of the Bozeman Deaconess Hospital as its representative. The CEO was part of a conference call, so he participated in the discussion. The vote to support that amendment was unanimous, but significant assurance would be necessary if they were to support some type of review process for conversion.

SEN. FRED THOMAS asked if this was closely tailored to the model act. **Chris Tweeten** said in general structure, it was close to the model act. Some of the definitions were changed, however, to conform it to existing Montana law. Subsequent provisions were changed to conform to some of **SEN. WATERMAN'S** ideas, in order to make the bill more closely fit with what she was hoping to achieve.

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SEN. THOMAS asked if it would be possible to get an analysis of the two, perhaps with the model act on one side and changes on the other. **Mr. Tweeten** said he could try to put something together.

SEN. THOMAS asked if **Attorney General Joe Mazurek**, himself, was in favor of every measure of this bill, or was it his office. **Mr. Tweeten** said there was no difference, i.e. the Attorney General was the office, and he was in full support.

SEN. THOMAS asked how closely the "material" definition followed that of the model act. **Chris Tweeten** said it was model act language, and the commentary in the model act indicated it intended to give the Attorney General flexibility in deciding which transactions he wished to review.

SEN. BOB DEPRATU said according to Section 9, it would be possible to require all experts or attorneys to review this. They may have to be flown in, because there may not be those types of experts in the state. He asked if the amount of money put on a small hospital which did not have many resources, would be considered significant. **Chris Tweeten** said frequently the companies which were planning to engage in the transaction, brought in the experts and spent considerable amounts of money to do that. In order for the Attorney General to determine whether the charitable assets were appropriately valued, he would need similar kinds of expertise. The question was whether the cost should be borne by taxpayers across the state, or should it be a cost of the transaction. The Attorney General's Office proposed it should be part of the cost of the transaction, paid by the

parties involved in the transaction. The cost would be based on the size of the transaction and amount of assets involved.

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SEN. DEPRATU said he understood that once the records were provided the Attorney General, they became public knowledge.

Chris Tweeten said that was not the intent of this legislation; in fact, they had discussed it thoroughly with BC/BS. They did not intend to change existing law which dealt with accessibility to the documents. Their intention was to make the documents public to the same extent they were under existing law.

SEN. DEPRATU said he had served on hospital boards and was concerned small communities were finding it harder and harder to find volunteers because of laws, rules and regulations. He wondered about entities having to certify to the Attorney General that they gave the sections of law to the board members, because that would mean board members would have the responsibility to do due diligence. He suggested it was getting to be heavy-handed.

Chris Tweeten said that was model act language and was included to ensure members of the corporate board were aware of their obligations. It was not intended to be intimidating to board members, but to provide them with information as to what their obligations were.

SEN. JOHN BOHLINGER asked about the Department's limited resources being stretched beyond its ability to perform. **Chris Tweeten** said it never was their objective to cover wide-ranging kinds of business decisions. It never was their intention to get involved with the day-to-day governance of companies which were subject to the legislation. In fact, the technical amendments made it very clear a health care conversion transaction, as defined in the bill, should not include transactions entered into by the corporation in the ordinary course of its business. He addressed the allegation **SB 322** would get the Attorney General involved in the day-to-day corporate decision-making of non-profits, by saying that was not the intent of the legislation. They would only be dealing with non-routine transactions.

SEN. BOHLINGER asked about the idea that making "insider" information public could destroy competitive advantage. **Mr. Tweeten** said the intent of the legislation was all existing protection under state law or trade secrets be maintained.

SEN. BOHLINGER asked about this legislation driving up costs of health care. **Mr. Tweeten** reiterated it was not the intent of the legislation because they were seeking to regulate in areas of

material substantial transactions outside the ordinary course of business were entered into.

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SEN. CHRISTIAENS asked the difference between a a non-profit public benefit corporation and a non-profit mutual benefit corporation and wondered what BC/BS was. **Mike Becker** said BC/BS was a non-profit mutual benefit corporation. The difference between the two, was a mutual benefit corporation existed for the benefit of its members.

SEN. GRIMES asked for comment on the "past transactions" issue and "establishes materiality", both of which were MHA amendments. **Mr. Becker** said they received those amendments just before the hearing, so he had not had time to review them. However, one problem they did see was in the five-year window where transactions were aggregating to determine reaching the 20% threshold. If a real estate transaction was caught in that five-year window, certainty would not be brought to it and title insurance could not be obtained.

Closing by Sponsor:

SEN. MIGNON WATERMAN said she was amazed at the resistance of BC/BS to this bill; however, she thought the concerns of MHA and MHESAC were valid, and the amendments they presented were good. She said she offered to work with BC/BS on amendments. She contended previous testimony regarding bonuses given to their employees would be reviewed by the Department was an over-reaction. She stated **SB 322** was simply a good policy when a not-for-profit company, which enjoyed a tax holiday, decided to become a for-profit company. There was an obligation to the citizens to ensure the taxable benefit the company gained over those years was reviewed, that they got fair market value and there was protection for the community benefit.

SEN. WATERMAN reiterated **SB 322** applied only if an entity was converting from non-profit to for-profit. When that happened, the transaction should be reviewed and the cost borne by those who would, in the end, profit from it.

HEARING ON HB 170

Sponsor: REP. GAY ANN MASOLO, HD 40, Townsend

Proponents: John Chappuis, Department of Public Health and Human Services

Opponents: None

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, Townsend, said **HB 170** dealt with the end stage renal disease program. Current law required the Department of Public Health and Human Services (DPHHS) to administer this program in terms of eligibility without requiring the person to be competent. This bill authorized DPHHS to develop financial needs criteria for eligibility. The program had only \$100,000 and it was usually gone by December, i.e. the demand far outstretched the program. Once the funds were gone, the program ceased to operate. She said instances of high-income individuals utilizing the program, demonstrated the need for the Department to develop criteria and act as a gate-keeper for the program so it could actually benefit only those who needed it. She asked for the Committee's approval of **HB 170**.

Proponents' Testimony:

John Chappuis, Department of Public Health and Human Services (DPHHS), read his written testimony **EXHIBIT**(phs33a09).

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. B.F. "CHRIS" CHRISTIAENS said the funding occurred in the Subcommittee on Human Services and wondered if the \$100,000 was in this session. **John Chappuis** said it had been approved at \$100,000 and was 100% General Fund.

SEN. SUE BARTLETT asked the reasoning behind the amendment which said the rules must include standards to ensure those individuals most in financial or medical need, or both, would be the first to receive financial assistance. **REP. GAY ANN MASOLO** said the Montana Medical Association (MMA) had some questions; therefore, the amendment was added.

SEN. BARTLETT asked **John Chappuis** if that did not put them back where they had been. He said at first only financial criteria was the issue; however, MMA was concerned medical criteria would not be considered. Medical criteria was a single guideline, and in that case it put them back to what they allowed. They also wanted a prioritization basis, where if someone was in dire need of a transplant or near death without the services, they could do prioritization of the medical. The medical criteria allowed more flexibility.

SEN. BOB DEPRATU asked about how many people the \$100,000 was able to serve. **Mr. Chappuis** said it was 170-200 people, and if an income criteria was established, the most financially needy could be served. They were looking at a spend-down, where if someone was making \$50,000 per year, and there was a lower income limit, that person could spend his or her money on expenses for dialysis. He or she would spend down the money and eventually be covered. They would be able to serve more people, but people with the highest income would be served by the program later.

SEN. DEPRATU asked how many people were in need in a year. **John Chappuis** said besides the 170-200, there were others

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who had neither Medicaid, Medicare or private insurance. Therefore, the number was higher than those they served.

SEN. JOHN BOHLINGER asked for the eligibility criteria in order to qualify. **Mr. Chappuis** said there was no financial criteria whatever, i.e. the statute was first come, first served. However, most people were those who did not have private insurance or were not eligible for Medicaid; therefore, they were in a lower income state and were the majority served. Another way of saying it was people were making some income, therefore they were ineligible for Medicaid but unable to afford private insurance.

SEN. CHRISTIAENS asked if the Subcommittee talked about increasing the funding. **Mr. Chappuis** said it did not happen in the Subcommittee.

Closing by Sponsor:

REP. GAY ANN MASOLO asked for a DO PASS for **HB 170**.

EXECUTIVE ACTION ON HB 170

Motion/Vote: **SEN. CHRISTIAENS** moved that **HB 170 BE CONCURRED IN**. Motion carried unanimously 10-0.

HEARING ON HB 319

Sponsor: **REP. RICK DALE, HD 39, Whitehall**

Proponents: **None**

Opponents: None

Opening Statement by Sponsor:

REP. RICK DALE, HD 39, Whitehall, said HB 319 extended the authority of cities which were too small to be among the Class I or Class II cities. Those larger cities now had the authority to join the county in forming a health board. An example was Beaverhead County, which was a classed county; however, it had no Class I or Class II city. He stated existing law prohibited them from pooling their resources with the county to form a city-county health board.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 319

Motion/Vote: SEN. THOMAS moved that HB 319 BE CONCURRED IN.
Motion carried unanimously 10-0.

EXECUTIVE ACTION ON HB 85

Motion: SEN. CHRISTIAENS moved that HB 85 BE CONCURRED IN.

SEN. DON HARGROVE said the last time the opposing factions were together was in Room 410, six years ago. They were unwilling to come to the table; therefore, the Committee was asked to make a decision for them. He said he could not come to a compromise from a medical standpoint, so he came to a 50-50 compromise. He explained his amendment HB008501.asf **EXHIBIT(phs33a10)** reinserted "topical."

Substitute Motion: SEN. HARGROVE moved that AMENDMENT HB008501.ASF BE CONCURRED IN.

{Tape : 3; Side : A; Approx. Time Counter : 7.3}

Discussion:

SEN. DUANE GRIMES said he opposed the amendment because he felt it was a turf war, and would continue to come before the legislature. He mentioned other states were doing it with a level of freedom and he did not feel there were significant dangers presented with the proposed idea of the bill.

SEN. JOHN BOHLINGER said his support of the amendment came from conversations with a close friend, an opthamologist, who expressed concerns about the deletion of "topical" from the bill. Reinserting "topical" was the only way **SEN. BOHLINGER** could support the bill.

SEN. EVE FRANKLIN spoke against the amendment by saying the bottom line was health and access issues. If it could be proven folks could safely give it and increase the access to the service, she could support it. As to "topical", she suggested the education of the O.D.'s was pretty sophisticated, and she was comfortable with their background, i.e. there was not a need to restrict them to just oral medications. She also felt O.D.s were duty-bound to operate within the scope of practice for which they were trained; therefore, it was reasonable to allow them to do the medication.

SEN. B.F. "CHRIS" CHRISTIAENS said he also opposed the amendment because he had a friend who practiced both at Malmstrom Air Force Base and in downtown Great Falls; in fact, it was exactly the same kind of practice. However, at Malmstrom he could use the topical drugs, while downtown he could not. If he was capable at one spot, he should also be capable at the other. **SEN. CHRISTIAENS** also agreed with the "scope of practice" position.

SEN. HARGROVE agreed it was a turf battle which should not be brought to the legislature, especially when the factions had not tried to work it out.

Vote: Motion that AMENDMENT HB008501.asf BE CONCURRED IN failed 4-6.

Vote: Motion that HB 85 BE CONCURRED IN carried 6-3, with **SEN. BOHLINGER, SEN. BARTLETT AND SEN. DEPRATU VOTING NO.**

ADJOURNMENT

Adjournment: 5:45 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

JANICE SOFT, Transcriber

AB/MM

EXHIBIT (phs33aad)